REMARKS

This responds to the Office Action dated January 24, 2006.

The application concerns a poultry wing separator that separates the wings at their joints. Both left and right wings are advanced in sequence along a processing line with their outside surfaces facing the same lateral direction, and with their outside surfaces at their elbow joints moved along an elbow guide. The wings are progressively bent about the elbow guide to open the elbow joint. This separates the segments.

Claim Rejections – 35 U.S.C. 102(b)

Claims 14 and 15 are rejected as being anticipated by Lindert et al.

Lindert et al. do not teach the concept of orienting both right and left wings with the outside surfaces of the wings facing in the same direction.

Claim 14 has been amended. It provides a specific definition of the right and left poultry wings. The *right* poultry wings are removed from the *right* side of a poultry carcass, while the *left* poultry wings are removed from the *left* side of a poultry carcass. They both have outside surfaces that faced away from a poultry carcass. The opposite surfaces are described as inside surfaces that faced the poultry carcasses.

Further, the claim defines a primary segment, a mid-wing segment having a pair of bones joined at an elbow joint to the bone of the primary segment. Thus, the application specifically defines the segments joined at joints.

Claim 14 further states the steps of:

advancing the wings in sequence along a processing path *with the outside surfaces of the right wings facing one side of the processing path and with the outside surfaces of the left wings facing in the same direction as the outside surfaces of the right wings, and with the joints between the segments of the right wings facing oppositely to the joints between the segments of the left wings,*

as the wings are advanced:

bending the primary segments of both right and left wings with respect to the mid-wing segments at the elbow joints about an elbow guide positioned on the outside surfaces of the poultry wings until the elbow joints are opened, and

separating the tissue extending between the primary segments and the mid-wing segments at the elbow joints to expose the elbow joints and to *separate the primary wing segments from the mid-wing segments at the elbow joints.*

Lindert et al. do not disclose the features emphasized above. The examiner indicated in the last Office Action that Lindert et al. meets the language because the wings of Lindert et al can be construed as a right or left wing in that the conveyor - at 19, one wing is positioned left or right of another respective wing.

The language indicated above in claim 14 now more clearly identifies that the right wing comes from the right side of the bird and the left wing comes from the left side of the bird. Accordingly, the terms "right" and "left" are not as indefinite as previously construed by the examiner. Furthermore, the processing of both the right and left wings in the manner as described in the specification, drawings, and in the claims is significantly different from Lindert et al. Lindert

et al. teach cutting the joints out of the wing structure. Applicant uses the joints to bend the wing segments so as to separate the segments. This is significantly different.

Lindert et al. does not disclose bending the wings about an elbow guide. This is no elbow guide in Lindert et al. Lindert et al. appears to hold the wings in an open position with the reception pockets 15 and 16 so that the wings can be cut by passing the wings over the cutting knives 22, so as to completely *eliminate* the joint between the wing segments. This is contrary to applicant's teaching.

First, applicant does not cut the joints from the wings. Applicant uses the joints so as to bend the segments of the wings, thereby separating the wings at the joints. Further, applicant bends both the right and left wings about an elbow guide positioned on the *outside* surfaces of the poultry wings to open the elbow joints. Lindert et al. do not do this.

Lindert et al. cut the wings on opposite sides of the joint out so the blades cut through the bones. This creates a chance that bone fragments will be generated and carried with the meat. By contrast, applicant cuts through the meat of the joint after the joint has been separated, as shown in paragraph 42. The cutting is only to separate the bones from one another, not to cut through the bones. Accordingly, applicant uses only one blade instead of two blades, and applicant does not require much power in the single blade because the blade does not have to cut through the bone.

Moreover, Lindert et al. cut meat away with the joint, so that some of the meat is wasted. In contrast, applicant cuts the meat so that substantially all of the meat about the joints is carried with the primary wing segments and mid-wing segments.

Applicant is bending the wing joints against their natural directions of movement, and that is why the joint break open and the bones pop out. Because of the tension of the meat and the skin about the joint when the joint is opened, the wing segments will be partially deboned at this stage of the process.

Indeed, Lindert et al. tend to teach away from applicant's invention in that the Lindert et al. process eliminates the joint, whereby applicant's process separates the joint so that the portions of the joints are retained with the work product.

The Office Action indicates that Lindert et al.'s elbow joints are opened as seen in Figs. 3-5. But Lindert et al. state:

> During passage through the cutting station (21) cuts (23) are made above and below the joint (14) when being viewed in the longitudinal bone direction. As a result of these cuts, joint (14) is severed from the wing. (Col. 4, lines 43-47.)

Lindert et al. further states:

> The upper wing piece (10) and the lower wing piece (11) are now subjected to another processing step. Joint (14) which is covered by adhering skin residues may here be regarded as a waste product which need no longer be processed in a further step. (Col. 4, lines 53-57.)

Therefore Figs. 3-5 clearly show and the above portions of Lindert et al.'s specification clearly teach that the cutting lines straddle the joint (Figs. 3 and 4) and the joint is completely cut out of the work product (Fig. 5).

Further, claim 14 states that the segments of the wings at the elbow joints are bent about an elbow guide positioned on the outside surfaces of the poultry wings until the elbow joints are opened. This is not taught by Lindert et al. Lindert et al. do not bend the elbow joints about an

elbow guide, and Lindert et al. do not teach the bending about an elbow guide positioned on the outside surfaces of the poultry wings until the elbow joints are opened. Indeed, Lindert et al. do not teach separation of the elbow joints. Further, Lindert et al. do not teach separating the tissue to expose the elbow joints.

Claim 15 depends from claim 14 and has been amended. Claim 15 includes the step of removing the mid-wing segment laterally and popping the bones of the mid-wing segment laterally, such that the end of the bones popped from the mid-wing segment are exposed.

Lindert et al. do not teach the step of moving the mid-wing segment laterally and do not teach popping the bones of the mid-wing segment *laterally*, and do not teach that the ends of the bones popped from the mid-wing segment are exposed.

Claim Rejections - 35 U.S.C. § 103(a)

Claims 1-9, 11 and 12 were rejected under § 103(a) as being unpatentable over U.S. Patent 5,494,479 to Lindert et al. in view of U.S. Patent 5,976,004 to Hazenbroek.

Independent claims 1 and 12 were considered together by the Examiner.

Claim 1 has been amended to specify that the wing has a tip segment joined at a tip joint to the bones of the mid-wing segment and extending away from the tip joint, and then suspending the wing from its tip segment at a position away from the tip joint at a protrusion in the tip segment.

The specification describes the tip protrusion in paragraph 37.

Lindert et al. do not specifically describe or illustrate a tip segment. At one place Lindert et al. even say that the "-wing tip (not shown) that is not to be used is cut off in a preceding

operation." (Col. 7, lines 25-27.) However, the drawings show a triangular shape that extends beyond the mid-wing segment in Lindert et al., and it is assumed that this triangular shape might be representative of a tip segment since this is the normal anatomic location for a wing tip.

Claim 1 specifies that the poultry wing is suspended from its tip segment at a position away from the tip joint at a protrusion in the tip segment during the process of *bending*, etc. Lindert et al. do not disclose this. At best, Lindert et al. show in a completely separate process the *stripping* the meat from of a segment of a wing while holding a mid-wing segment adjacent the tip joint. (See Fig. 7a.)

Hazenbroek is used in the rejection to teach suspension of the wing from the tip segment, and refers to item 100 in Fig. 13. The rejection asserts that Hazenbroek suspends the wing at its tip prior to bending the wing via the stripper elements at 79-83 of Fig. 13 of Hazenbroek.

However, Hazenbroek does not teach the stripping of a bendable wing structure. Hazenbroek teaches only the stripping of *segments*, such as thighs or segments of wings. Fig. 13 of Hazenbroek does not disclose or suggest stripping of s whole poultry wing. There is no illustration of the work product in Fig. 13 of Hazenbroek and the function of the Hazenbroek apparatus illustrated and described at Fig. 13 is for *stripping* an unbendable poultry parts, such as thighs or possibly segments of wings that do not bend.

Moreover, Hazenbroek does not teach the step of suspending whole poultry wings from the wing tips. Hazenbroek only states that *segments* of wings, not whole wings are stripped. (Abstract, line 2.) Therefore, Hazenbroek does not disclose suspending a wing by its tip and striping the next

bone down. By contrast, Hazenbroek, like Lindert et al., uses the knuckle at the distal end of a bone to be wedged into the crotch of the carrier fork 100. Hazenbroek states:

> When in operation, a poultry part, such as a poultry thigh, is wedged into the crotch of the carrier fork 100, by placing a *knuckle* at the distal end of the *thigh bone* just above the carrier fork and with the remaining portion of the thigh extending below the carrier fork, so as to present the meat and major portion of the bone of the thigh to the stripper blades 79 and 80.

There is no disclosure in Hazenbroek as to how a whole chicken wing could be supported, and stripped.

Claim 1 also distinguishes over the applied references by reciting the step of bending the primary segment of the wing at the elbow joint with respect to the mid-wing segment of the wing laterally about an elbow guide. This is not taught or made obvious in either of the applied references.

Claim 1 also includes the step of separating the stretched tissue extending between the primary segment and the mid-wing segment at the elbow joint at a position that exposes the end of the bone of the primary segment. This is not shown or made obvious by either of the applied references.

Dependent claim 4 includes the step of suspending the poultry wing from its tip by wedging the tip segment at the tip protrusion into a slot of a shackle. The tip segment is defined in its parent claim as a tip segment joined at a tip joint to the bones of the mid-wing segment and extending away from the tip joint. This definition precludes a rejection based on Lindert et al. or Hazenbroek since neither of these references teach the concept of suspending by the wing tip.

The steps provided in claims 5 and 6 are nowhere found in either of the applied references.

The examiner argues that applicant's assertion that the combination of Lindert et al. and Hazenbroek would not provide enough support to allow the cutting blades - at 22 of Lindert et al. to cut the wing is mere argument and based on opinions and not statements of fact. However, the opposite argument by the examiner is also met with the same defect, in that there is nothing to support the examiner's argument that Hazenbroek would provide enough support to achieve the function of applicant's invention. The burden rests with the examiner. In the meantime, Lindert et al. do not disclose the bending and separating steps as set forth in any of the claims of the application. Lindert et al. cut out the joint. This is clearly shown in Figs. 4 and 5 of Lindert et al., and this teaches away from applicant's invention.

The combined references do not describe or make obvious the limitations of dependent claim 8, of maintaining the mid-wing segment in contact with the rotary guide as the primary segment is bent about the elbow guide until the elbow joint is opened and separated.

> The rejection further indicates:
>
> --it is deemed that the cutting blades - at 22 of the Lindert et al. reference cause a bending of the wing when the blades produce a force on the wing as set forth with respect to claims 14-15 above.

However, there is nothing in Lindert et al. that supports this conclusion. Indeed, a comparison of Figs. 3, 4 and 5 of Lindert et al. show that the work product is in the same orientation of the parts of the wing before, during, and after the cutting function where the joint is cut out from between the primary segment and the mid-wing segment, with the reception pockets

15 and 16 firmly holding the primary segment and mid-wing segment during the cutting process. Further, Lindert et al. do not teach the step of bending the segments with respect to each other about the intermediate joint for the purpose of opening the joint. Lindert et al. cut out the joint, Lindert et al. do not bother to open the joint. Neither does Hazenbroek.

The combination of references has been made with a generous helping of hind sight reconstruction. As stated by the court in Ruiz v. A.B. Chance Co. 357 F3d 1270, 69 USPQ2d 1686 1690 (Fed. Cir. 2004):

> In making the assessment of differences, section 103 specifically requires consideration of the claimed invention "as a whole." Inventions typically are new combinations of existing principles or features (citing cases). The "as a whole" instruction in title 35 prevents evaluation of the invention part by part. Without this important requirement, an obviousness assessment might break an invention into its component parts (A+B+C), then find a prior art reference containing A, then another containing B, and another containing C, and on that basis alone declare the invention obvious. This form of hind sight reasoning, using the invention as a roadmap to find its prior art components, would discount the value of combining various existing features or principles in a new way to achieve a new result –often the very definition of invention

Even if hind sight reconstruction is allowed, the patching together of the references does not provide the process claimed. Also, the same result would not be obtained.

Applicant submits that the claims of the application are in condition for allowance in that they adequately describe over the references of record. The applied references simply do not

anticipate or make obvious the subject matter as set forth in the claims. Indeed, the combination of Hazenbroek with Lindert et al. does not make the revised Lindert et al. product workable, and there is no suggestion or motivation to create the combination. This combination is made by the forbidden hind sight reasoning (Ruiz, supra).

It has long been the law that prior art may not be gathered with the claimed invention in mind. Pentec, Inc. v. Graphic Controls Corp., 776 F. 2d 309, 227 USPQ 766 (Fed. Cir. 1985). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to depreciate the claimed invention. In re Fine, 837 F. 2d 1071, 5 USPQ 2d, 1596, 1600 (Fed. Cir. 1988).

Applicant submits that the claims of the application, as further amended, particularly point out and distinctly claim applicant's invention. Accordingly, favorable reconsideration of the application is courteously solicited.

Respectfully submitted,

George M Thomas 2/16/06

George M. Thomas, Reg. No. 22,260

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P.
Suite 1750
100 Galleria Parkway N.W.
Atlanta, Georgia 30339
(770) 933-9500